

REMARKS/ARGUMENTS

Claims 1, 3-5, 9-12 and 15-20 are active. Claim 1 is amended to further define the lipophilic emulsifier in accordance with the disclosure on pages 11-13 and consistent with the comparative data made of record in the present application.

Claims 11 and 12 have been withdrawn but have been retained for the purposes of rejoinder consideration.

No new matter is added.

The Action maintains the rejections for anticipated (e.g., lack of novelty) and obviousness in view of U.S. patent no. 6,645,476.

The '476 patent described preferred water-soluble polymers (col. 3, lines 23-67) including AMPS and fatty alcohol polyglycol ethers (e.g., Genapol® LA-070) that are also used in the context of the present application. The '476 patent suggests the possibility of emulsions (including oil-in-water, col. 9, lines 11-15) and the inclusion of coemulsifiers, such as sorbitan esters and others (see col. 9, lines 27-63). However, none of the Examples provided in the '476 patent include a lipophilic emulsifier and the mere suggestion to include a coemulsifier in col. 9, lines 27-63 fails to illustrate the importance of a lipophilic emulsifier as opposed to another type of emulsifier, particularly considering the rather long and general list of other surfactants, which themselves can act as emulsifiers in certain instances)

On page 4 of the above-referenced application, it is stated that "the polymers illustrated in the said document do not produce O/W emulsions with cosmetic properties that are very pleasant for the user while at the same time being very stable and easy to produce." Comparative Examples 1 and 3 in the above-referenced application shows that emulsions containing the polymer as the only emulsifier were not stable.

The '476 patent describes oil-in-water emulsions in Examples 41-43 while the other examples are water-in-oil or water-based compositions. Example 41 includes a hydrophilic co-emulsifier (sodium cocyl glumate) and Examples 42 and 43 contain no co-emulsifiers.

While Applicants understand that a prior art disclosure is not limited to its preferred embodiments but rather all that it teaches, it is also the law that "It is not sufficient that each element be found somewhere in the reference, the elements must be 'arranged as in the claim.' Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co., 730 F.2d 1452, 1458 (Fed. Cir. 1984). See also Ex parte Standish, 10 USPQ2d 1454, 1457 (Bd. Pat. App. & Int'l 1989) ("anticipation of a claimed product cannot be predicated on mere conjecture as to the characteristics of a prior art product").

In the case of the '476 patent, it simply is not reasonable that by merely suggesting a plethora of possible options, this is sufficient to put the specific components with specified compositions as defined in the claims in the possession of the public. The '476 patent simply has not arranged the elements of the claims as the law requires and certainly provides no disclosure to specifically include a lipophilic emulsifier selected from the group consisting of glyceryl stearate, PEG-8 isostearate, sorbitan isostearate, sorbitan glyceryl isostearate, methylglucose isostearate, sucrose stearate, dimethicone copolyols and a combination thereof (see Claim 1).

Therefore, the present claims cannot be anticipated by the disclosure of the '476 patent.

With respect to the obviousness-contention. The present application provides comparative data demonstrating the importance of including a lipophilic emulsifier (see comparative Examples 1 and 3) but not other types of emulsifiers (see comparative Example 2). Even in view of what is described in the '476 patent, that a lipophilic emulsifier (further

examples follow) resulted in such a dramatic difference compared to other emulsifiers could not have been reasonably predictable.

The tests submitted in the Declaration provide two additional examples of a silicone surfactant and a sucrose ester, which are two additional examples of a lipophilic emulsifier as provided in the above-referenced application.

	Example A according to the invention	Example B according to the invention
<i>Oily phase:</i>		
Cyclohexadimethylsiloxane	6	6
Parleam® oil	9	9
sucrose tristearate (RYOTO SUGAR ESTER S 370 from Mitsubishi)	0.5	-
PEG/PPG 18/18 dimethicone (DOW CORNING 5225C FORMULATION AID)	-	0.5
<i>Aqueous phase</i>		
Copolymer of AMPS and of Genapol LA-070 methacrylate (with 8.5 mol% of monomer of formula II)	1	1
Triethanolamine as an aqueous 10% solution	0.06	0.06
Preserving agents	1	1
Water	qsp 100%	qsp 100%
pH	6.65	6.51
Viscosity	107.5 cPoises	188 cPoises

The compositions obtained are in the form of fine and stable emulsions (fluid milk), the viscosity of each composition being measured using a Rheomat 180 machine at 25°C at a shear rate of 200 s⁻¹ using a No. 2 spindle.

One of the criticisms lodged against the claims and the data presented is that the claims were not deemed to be commensurate in scope with the data presented. It should be readily apparent that based on the Examples in the specification, see Examples 1-4, and the two additional Examples presented in the Declaration are representative of the limited number of lipophilic emulsifiers that are now defined in Claim 1: “glyceryl stearate, PEG-8 isostearate, sorbitan isostearate, sorbitan glyceryl isostearate, methylglucose isostearate, sucrose stearate, dimethicone copolyols”

Withdrawal of the rejections and a Notice of Allowance is requested.

Respectfully submitted,

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